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IN THE

# Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. 355

TALMADGE HAYER, NORMAN BUTLER AND THOMAS JOHNSON, *Petitioners*

v.

THE STATE OF NEW YORK, *Respondent*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Petitioners, Talmadge Hayer, Norman Butler and Thomas Johnson, pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York affirming orders of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, which had affirmed judgments of the Supreme Court of the State of New York, County of New York, dated April 14, 1966, convicting them of murder in the first degree.

## OPINION BELOW

The opinion of the New York Court of Appeals, not yet officially reported, is reprinted herein as an Appendix.

## JURISDICTION

The judgment of the New York Court of Appeals was entered on April 16, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

## QUESTION PRESENTED

Whether petitioners were denied their right to a public trial when, in the absence of any threatened disturbance in the courtroom, the trial judge, acceding to the wishes of a prosecution witness who stated that he was afraid to testify in public, cleared the courtroom of all spectators and members of the press during the testimony of that witness and of another witness whose testimony related to that of the first.

## STATEMENT OF THE CASE

In mid-afternoon of February 21, 1965, one Malcolm Little, better known as Malcolm X, began to address a crowd gathered in the Audubon Ballroom at 166th Street and Broadway in New York County. Two men in the audience, later identified as petitioners Hayer and Butler, created a disturbance (235-38),[1] thus diverting the attention of the guards on the rostrum (1225-36; 1609-12; 1614-24). A third man, later identified as petitioner Johnson, approached the rostrum from a nearby seat and fired a sawed-off shotgun at

[1] Unless otherwise noted, all parenthetical references herein are to the mimeographed trial transcript already filed with the Clerk of the Court.

Malcolm X who, struck in the chest, fell backward (239-42). The two who had initially created the disturbance then ran forward to the place where Malcolm X had fallen and fired shots into his prone body (242-43; 249-51). Malcolm X was pronounced dead shortly thereafter (2406; 2426-28).

In the ballroom at the time of the crime was a man named Ronald Timberlake. The two who had created the disturbance fled past him and down a flight of stairs on their way out of the hall, leaving behind them on the staircase a .45 caliber automatic which Timberlake recovered, took home, inspected and later turned over to the authorities (1318-25).

Shortly after the crime, the police apprehended petitioner Hayer outside the ballroom; he had been shot in the leg by one of Malcolm X's followers and had to be rescued from a crowd by patrolmen in a passing squad car (962-64; 1231-37; 1449-73). The two other petitioners were arrested within a few days. On March 10, 1965, all three were indicted for the crime of murder in the first degree. Trial commenced on January 20, 1966. The prosecution introduced evidence sufficient, if believed, to warrant the conviction of all three petitioners. Petitioners Butler and Johnson denied guilt and introduced evidence of an alibi. Petitioner Hayer testified twice, first denying guilt (2676-95) but later recanting, confessing guilt and exonerating his co-defendants (3144-51), although declining to name his actual accomplices (3217-20). The jury convicted all three petitioners, and on April 14, 1966, each was sentenced to life imprisonment.

During the presentation of its case, the prosecution called Ronald Timberlake as a witness. Timberlake appeared with counsel who, outside the presence of